IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 134 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREEJI BOTTLE TRADING CO.

Versus

DEPILA PHARMACEUTICALS PVT.LTD

Appearance:

1. COMPANY PETITION No. 134 of 2001

MR CHIRAG R KOTHARI for Petitioner No. 1

UNSERVED-REFUSED (N) for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/11/2002

ORAL JUDGEMENT

1. The petitioner has filed this company petition for winding up of the respondent - company for its failure to pay an outstanding amount of Rs.2,61,744/- to the petitioner.

2. It is stated in the petition that in pursuance of

order placed by the respondent - company the petitioner sold and supplied the AMBER, White & Blue Bottles and allied accessories to the respondent - company. The petitioner has supplied these materials and raised several bills on respondent - company from time to time. The petitioner has produced statement of accounts alongwith the petition and as per the said statement of accounts, outstanding amount was shown as on 01/04/2001 at Rs.2,88,545/-. However, the petitioner has made claim of Rs.2,61,744/- alongwith interest at the rate of 18% per annum. A statutory notice was given by the petitioner on 9/2/2001 to the respondent - company. The said notice was duly served on the respondent - company and yet neither any reply was given nor any payment was made by respondent - company to the petitioner. The petitioner, was, therefore, constrained to file winding of petition before this Court and this Court has issued notice on 18/07/2001 making it returnable on 8/8/2001. The petitioner tried to serve notice of this petition to the respondent - company, but the respondent - company has refused to accept the said notice. This Court therefore, had recorded in its order passed on 8/8/2001 that according to law, refusal of notice can be said to be "deemed service". It is further recorded that non-appearance of the respondent - company is sufficient for admission of winding up petition. Accordingly the petition was admitted. However, the order of publication of advertisement was deferred till 31/8/2001.

3. This period was subsequently extended from time to time and ultimately, the advertisement was published in two daily newspapers namely "Asian Age" English Daily and "Sambhav" Gujarati daily, Ahmedabad edition. Formal publication in official Gazette was dispensed with and the final hearing of the petition was fixed on 3.2.2002. The petitioner has filed affidavit of service and under that affidavit, copy of both the advertisements was filed before this Court.

4. Even after publication of both the advertisements no one has filed appearance on behalf of respondent company. This matter was thereafter placed for final hearing on 10/10/2002. This Court had passed order that the petitioner should file proper affidavit of service of notice and accordingly the said affidavit of service of notice is filed today before this Court. Today Mr.Vyapak Desai learned advocate appearing for Mr.Chirag Kothari learned advocate appearing for the petitioner is present in the Court. Further no appearance on behalf of the respondent - company is filed. Mr.Desai has therefore, prayed for winding up order to be passed against

respondent - company. He has further submitted that there is another winding up petition being Company petition no.135/2001 filed by Silver Laminates against respondent - company and the same is also placed for final hearing today. Even advertisement which was published in the newspapers were in respect of both these winding up petitions.

5. I have heard Mr.Desai learned advocate appearing for the petitioner and I have also gone through the contents of both the petitions and also perused the documents attached alongwith these petitions. It is an admitted position as it emerges on record that the petitioner has supplied goods and there was an outstanding amount to the tune of Rs.2,61,744/- due and payable to the petitioner by the respondent - company. Despite statutory notice neither any amount is paid nor any reply is given. Even notice of the petition was also not accepted by the respondent - company. Pursuant to the order of admission of the petition and publication of the advertisement in two newspapers about final hearing of the petition no one appears on behalf of the respondent - company and hence the petition was required to be heard in absence of any representation from respondent - company. All these factors gave an indication that respondent - company is not interested in defending winding up petition against it. It is further revealed from the petition that respondent - company was heavily indebted to other creditors - secured as well as unsecured and the respondent - company has failed to keep its promises and fulfill its commitments. The financial substratum of the company has gone down and the company had become commercially insolvent.

6. In above view of the matter, I am of the view that this is a fit case where winding up order is required to be passed against the respondent - company and hence respondent - company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as Official Liquidator of respondent company and he is directed to take over the possession of the entire assets of the respondent company.

This petition is accordingly allowed.

[K.A. PUJ, J.]

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